

Inspector General Institute
Minutes of the Board of Governors Meeting
April 24, 2006

1. The IG Institute's Board of Governors met on April 24, 2006 (1:15 pm) at 1735 North Lynn Street, Rosslyn, VA.
2. Attendees were:
 - Robert Emmons, BOG Chairman, IG, Pension Benefit Guaranty Corp (HR Committee)
 - David Williams, IG, US Postal Service (USPS), (Investigations Committee)
 - Jill Gross, AIG, Commerce (Inspection & Evaluation Committee)
 - Dennis Schindel, Deputy IG, Department of Treasury (Audit Committee)
 - Bryan Saddler, Housing and Urban Development
 - Lisa Martin, General Counsel for US Postal Service OIG
 - Tom Sharkey, Acting Executive Director, IG Institute
 - Della Whorton, Board Secretary
3. Chairman of the Board of Governors, Mr. Emmons, announced that a quorum existed and opened the meeting.
4. The minutes from the March 27, 2006 BOG meeting were accepted and approved.
5. Mr. Emmons briefed the board members on his meeting with the Executive Board on the legal status of the Institute.
6. The Chairman introduced Lisa Martin who briefed the BOG members on the Institutes legal authority to operate. In summary, the Training Act trumps the Economy Act. The Inspector General Institute and its operations are authorized by Executive Order 12805, the Training Act, the Economy Act, Public Law 106-422, and the memorandum of understanding (MOU) that established the audit academy. In addition, the Intergovernmental Personnel Act provides a legal basis for detailing federal employees to GMU to assist with the operation of the Institute.

The Board approved a new section of the business plan that explains the Institutes legal authority to operate. (Attachment 1)
7. Dennis Schindel briefed the Board on the Agreed-Upon-Procedures financial review of the accounting records for the three schools. The outstanding issue caused by co-mingled funds and IGATI's ability to identify, has been clarified. Mr. Schindel stated that the audit team will have everything they need from

IGATI by May 1st and that the Board will receive a report by next meeting May 22nd.

8. Dennis Schindel confirmed that his council has taken the position that the Corpus can be spent as long as it is used for the School of Audit and Inspections. Bob Emmons asked that Dennis Schindel provide a written opinion from his counsel before any corpus of IGATI is considered because the Executive Committee of the PCIE/ECIE had been told that it was inappropriate to use the corpus without Congressional approval. He also directed the Institute to not expend the corpus until the issue was resolved.
9. Mr. Schindel left the meeting at 2:40 p.m.
10. Jill Gross briefed the Board on the recruitment efforts. A draft for the recruitment process was provided. Following the discussion, the Board agreed to these suggestions:
 - The Board should select the Executive Director position first; then, have the Executive Director assist the BOG as a non-voting member with the interviews for the other positions.
 - The Director of Special Projects will have responsibilities for all administrative support, a function that currently resides in Postal.
 - Create a Director of Resource position with responsibilities for the support of personnel in the federal, state, local and foreign IG communities.
 - Pre-Screen the list of candidates and provide selected candidates for interviews to the Board. (Jill Gross and Bob Emmons volunteered to perform this task.)
11. Mr. Emmons provided a brief overview of Ken Konz's review of the potential for Outsourcing (comparing the merit of doing collections in-house or under contract). GMU registration has major limitations because it doesn't allow students to register electronically. The BOG has a concern about the overall cost and whether the system will satisfy customer needs. The study will be completed next month.
12. Mr. Emmons provided a draft of the charter for the Institute to the Human Resource Committee Chair Earl Devaney, IG of DOI. The charter defines responsibilities of both the Institute and the PCIE/ECIE committees. Mr. Emmons will report back to the Investigative Committee, Curriculum Committee and the BOG.
13. Mr. Sharkey briefed the Board on the following:
 - Operations Team,

- FY 07 Salaries and Benefits Budget,
- GMU FICA, Fringes and Overhead (For a new full-time Director, the fringe benefit rate is 27.65%. Added on top is the overhead off-campus rate is 27.10%. Employees will be responsible for the cost of health benefits and the fringe benefit rate may be able to be waived for non-professor contractors),
- Financial and Accounting Services and,
- Estimated Tuition “at cost” for Introductory Courses

Following the presentation, the Board agreed to:

- establish a limit for the salaries and benefits for non-IPA positions of the current vacancy positions by providing GMU with a “not to exceed” amount in the task order and,
- reduce assessments for 2007 and charge each OIG for introductory courses at a variable cost based on the number of actual students participating.

11. Mr. Emmons called the Board into Executive Session and Tom Sharkey and Lisa Martin departed. The Board requested Bryan Saddler to stay.

- The Chairman asked Mr. Saddler if he had any legal concern about the Institute’s authority to operate. Mr. Saddler confirmed that the Institute has the legal authority to operate and that he had no concern.

12. Mr. Emmons adjourned the meeting at 3:45 pm. The next scheduled BOG meeting is May 22, 2006, 1 pm to 4 pm, at the IG Institute.

[Attachment #1 – Business Plan Section on Legal Issues](#)

Attachment #1 – Business Plan Section on Legal Issues

Legal Issues

I. Operation

For the consolidated IG Training Institute, the PCIE authorized creation of a Board of Governors, comprised of representatives from different OIGs,¹ including representatives from the Department of Treasury and the USPS-OIG. The PCIE authorized the Board of Governors to hire an executive director and others to operate the IG Training Institute, collect funds and make disbursements, set training curricula, and oversee quality.² The Board of Governors also chooses personnel to support the IG Training Institute's infrastructure, including employees on detail, through Intergovernmental Personnel Act ("IPA") agreements and otherwise, and contractors. Classroom instructors develop and deliver the training.

At the Board of Governors' request, USPS-OIG undertook a competitive process to contract with an educational institution to provide administrative assistance, including curriculum review, course development, and instruction assistance for the training institutes.³ In December 2005, George Mason University ("GMU") was awarded the competitive contract. The contract expires on September 30, 2006, with four one-year options for extension. If the Board of Governors substantially changes the scope of the contract in the future, a new competition or justification for the award of a non-competitive contract may be necessary. Further, to the extent the Board of Governors would require additional contracts; GMU would be precluded from evaluating those contracts if it sought to compete for the contract.

The Board of Governors should consider entering into an MOU with USPS-OIG to clarify their relationship, including the Board's role in providing direction for the GMU contract.

II. Authorities

The IG Training Institute⁴ and its operations, as directed by the Board of Governors, are authorized by Executive Order No. 12805, the Training Act, the Economy Act, Public

¹ Currently, the following OIGs are represented on the Board of Governors: Pension Benefit Guaranty Corporation, Postal Service, Commerce Department, Corporation for Public Broadcasting, Department of Treasury, and Housing and Urban Development.

² Charter, Board of Governors.

³ The Institute as it now exists does not have authority to enter into contracts on behalf of the three schools. Contracting authority and other legal responsibilities, such as FOIA, FISMA, and EEO compliance, continue to reside within the OIGs that manage each school. This model has functioned smoothly for the individual academies since their creation.

⁴ The IG Institute currently consists of the investigative academy, audit academy, and management institute. None of the entities currently are non-appropriated fund instrumentalities ("NAFIs"). Unlike a NAFI, the IG academies were created for the benefit of the IG community, not individual employees and their dependents. (See *Ains, Inc. v.*

Law 106-422, and the Memorandum of Understanding related to the establishment of the audit academy. In addition, the Intergovernmental Personnel Act provides a legal basis for detailing federal employees to GMU to assist with the operation of the Institute. Each of these authorities is discussed in further detail here.

A. Executive Order No. 12805,
Integrity and Efficiency in Federal Programs

Executive Order 12805 established the PCIE and ECIE to “continually identify, review, and discuss areas of weakness and vulnerability in Federal programs and operations to fraud, waste, and abuse, and... develop plans for coordinated, Government-wide activities that address these problems...”⁵ As part of this mission, the PCIE/ECIE is tasked with developing plans for “interagency and inter-entity audit and investigation programs and projects to deal efficiently and effectively with those problems concerning fraud and waste that exceed the capability or jurisdiction of an individual entity.”⁶ Moreover, the PCIE/ECIE “shall develop policies that will aid in the establishment of a corps of well-trained and highly skilled Office of Inspector General staff members.”⁷ Providing oversight to IG community-wide training is within the mandate of this Executive Order. The PCIE/ECIE authority is not, of course, without limit. PCIE/ECIE cannot “interfere with existing authority and responsibilities in the relevant agencies and entities nor augment or diminish the statutory authority or responsibilities of individual members of either Council.”⁸

B. The Training Act and the Economy Act⁹

The Government Employees Training Act (“Training Act”) gives federal agencies broad authority to provide employee training within the agency or through other government agencies or non-governmental sources.¹⁰ The Training Act explicitly encourages interagency training by providing that “two or more agencies jointly may operate under a training program.”¹¹ Moreover, heads of federal agencies are encouraged to “extend agency training programs to employees of other agencies” and assign “employees to

United States, 56 Fed. Cl. 522, 527-532 (2003).) Moreover, NAFLs typically operate under a clear expression from Congress that they will not receive appropriated funds. On the contrary, Congress has previously approved the use of appropriated funds for both the investigative and audit academies.

⁵ Exec. Order No. 12,805, 57 Fed. Reg. 20,627 (May 11, 1992), *reprinted in* 31 U.S.C. § 501.

⁶ *Id.*

⁷ *Id.*

⁸ *Id.*

⁹ For further discussion regarding the Training Act and Economy Act, see Memorandum from Kathleen S. Tighe and Howard L. Sribnick on Legal Authorities Supporting IGICIA Funding Arrangement (Jun. 11, 1996).

¹⁰ 5 U.S.C. §§ 4101-4118.

¹¹ 5 U.S.C. § 4103.

interagency training whenever this will result in better training, improved service, or savings to the Government.”¹²

The Training Act also authorizes agreements among agencies to provide joint training and flexible payments for interagency training, including an option for payment on a reimbursable basis.¹³ Pay arrangements may be flexible as long as the arrangement obtains “maximum training benefit from each training dollar spent.”¹⁴

The Economy Act authorizes interagency furnishing of goods and services on a reimbursable basis, specifying that agencies will pay for goods and services based on the actual cost of the goods and services provided.¹⁵ One may argue that if this provision of the Economy Act applied to interagency training, then it might call into question the practice of assessing OIGs for Institute-related costs based on the number of criminal investigators at each OIG, rather than the number of employees at each OIG who actually participate in Institute training each year. However, the Comptroller General has held that the term “actual costs” as used in the Economy Act “has a flexible meaning and recognizes distinctions or differences in the nature of the performing agency, and the purposes or goals intended to be accomplished.”¹⁶

The Economy Act was intended to promote interagency cooperation, not interagency bickering over billings. Hence, the statutory scheme emphasizes the role of agreement. It contemplates that application of the “actual cost” standard in a given case should be “primarily for administrative consideration, to be determined by agreement between the agencies concerned.” In the interest of intragovernmental harmony, it has been held that the Economy Act does not require a detailed cost audit by the ordering agency. Nor does it require the performing agency to provide a detailed breakdown unless the agreement provides otherwise. Payment is authorized “at rates established by the servicing agency so long as they are reported to be based upon the cost of rendition of the service and do not appear to be excessive.”¹⁷ (Citations omitted)

¹² Exec. Order No. 11,348, 32 Fed. Reg. 6335 (Apr. 20 1967), *reprinted as amended in* 5 U.S.C. § 4103. Interagency training may occur at either Government or non-Government facilities.

¹³ 5 U.S.C. § 4104: “An agency program for the training of employees... shall... provide for the making by the agency, to the extent necessary and appropriate, of agreements with other agencies in any branch of the Government, on a reimbursable basis when requested by the other agencies...” See also OFFICE OF PERSONNEL MANAGEMENT, TRAINING POLICY HANDBOOK, AUTHORITY AND GUIDELINES, May 2000, *available at* http://www.opm.gov/hrd/lead/pubs/handbook/Training_policy_hndbk04.pdf, which states that “agencies may provide interagency training on a reimbursable or non-reimbursable basis.”

¹⁴ *To the Administrator, Veterans Administration*, B-167874 (Nov. 13, 1969).

¹⁵ 31 U.S.C. §§1535.

¹⁶ *In the matter of Washington National Airport; Federal Aviation Administration; intra-agency reimbursements under 31 U.S.C. 686 (1970)*, B-136318, 57 Comp. Gen. 674, *as discussed in* GAO, Principles of Federal Appropriations Law, Vol. IV, Ch. 15 § B(1)(c)(2).

¹⁷ GAO, Principles of Federal Appropriations Law, Vol. IV, Ch. 15 § B(1)(c)(2).

Therefore, the Economy Act does not prohibit the Institute from assessing funds from each OIG based on the number of employees at that OIG.

Even if the Economy Act prohibited assessments, the Comptroller General has held that the Economy Act only applies to interagency acquisitions *unless* there is more specific authority for such transactions.¹⁸ In particular, the Comptroller General has found that the Economy Act's general provisions do not apply to interagency training because the "Training Act provides independent and specific authority for agencies to provide interagency training on a reimbursable or non-reimbursable basis."¹⁹ Therefore, because the Institute provides interagency training under the Training Act, it has more flexibility in establishing a method of payment for OIGs that participate in Institute training.²⁰ While the Institute does not have the authority to compel OIGs to participate in an assessment based on the number of criminal investigators in each OIG, it does have the flexibility to specify the method of payment for voluntary participation in Institute training. In the past, when OIGs have declined to pay assessments, their employees were not allowed to participate in inter-agency training. To avoid any misunderstandings regarding payment, agreement on the method of payment could be formalized in a Memorandum of Understanding with participating OIGs.²¹

C. Public Law 106-422

IG-centered investigative training began at FLETC in 1987, and by 1994, the PCIE had established an independent investigative academy. In 1999, the PCIE formed the current investigative academy, a model which Congress endorsed in 2000 in Public Law 106-422. Public Law 106-422 established the investigative academy within the Department of Treasury for the purpose of providing investigator training services for the IG community.²² However, Congress did not vest all authority to operate the investigative academy solely within the Department of Treasury. The law specifies that the Executive Director of the investigative academy may report to *any* inspector general – as defined in section 11 of the IG Act – designated by the PCIE.²³ Congress seems to support interagency participation in the investigative academy's operation, as well as the PCIE's role in its oversight. It also may be argued that the PCIE's authority to designate the IG to whom the Executive Director will report gives it leeway to combine the investigative academy with another entity as long as Treasury has a supervisory role on the Board.

¹⁸ *Matter of Floro & Associates*, B-285451.3 and B-285451.4 (Oct. 25, 2000).

¹⁹ *Decision of Associate General Counsel Kepplinger*, B-241269 (Feb. 28, 1991); *See also Decision of Comptroller General*, B-193293 (Nov. 13, 1978).

²⁰ Assessments likely do not violate the Anti-Deficiency Act (31 U.S.C. § 1341) because the assessments are made on an annual basis, for the current fiscal year only, and are contingent upon agencies receiving their anticipated appropriations.

²¹ These MOUs would be made pursuant to the Training Act and Executive Order 12,805, not the Economy Act. Even though the Postal Service is not bound by the Training Act, it could enter into such MOUs based on the Postal Reorganization Act (see 39 U.S.C. §§ 411 and 1001(b)) and the Training Act (see Executive Order No. 11,348 and 39 U.S.C. § 4104).

²² Pub. L. No. 106-422, § 2, 114 Stat. 1873 (2000).

²³ *Id.*

However, because of Congress's involvement in the investigative academy's current existence, it may be prudent to address the investigative academy's proposed new legal status through legislation.²⁴

D. The Audit Academy Memorandum of Understanding

Between 1992 and 1999, 63 OIGs entered into a Memorandum of Understanding ("MOU") to establish the audit academy for the purpose of providing auditor training to the IG community in an effective and economical manner. PCIE's Audit Committee and the Inspector General for Treasury constitute the audit academy's Board of Directors. The PCIE – through the audit academy's Board of Directors – has the authority to establish training policies and needs for the audit academy, as well as approve the Director of the audit academy. PCIE can delegate these authorities to the Board of Governors, and the IG community should consider a new MOU to formalize changes in the audit academy's governance and financial support provisions.

E. Intergovernmental Personnel Act

In addition to using contractors, GMU personnel, and detailees, the Board of Governors intends to encourage OIGs to utilize the Intergovernmental Personnel Act ("IPA") to detail employees to GMU to help operate the Institute.²⁵ For each OIG employee who will perform work for the Institute, the Board of Governors and the employee's OIG will determine the most appropriate employment arrangement. If IPA agreements are used, then that agreement will be between the OIG employee, his or her OIG, and GMU. The Institute will reimburse the OIG directly for its expenses, including the employee's salary, benefits, and other expenses, related to the IPA assignment.

The purpose of an IPA program is to facilitate cooperation between Federal agencies and non-Federal entities through the temporary assignment of skilled workers.²⁶ The IPA allows certain federal employees to take temporary assignments at certain non-federal entities, and vice versa. Federal employees who participate in the program must be career or career-conditional employees, and may include Senior Executive Service appointees and individuals under appointments of equivalent tenure in excepted service positions.²⁷ Eligible non-federal entities include state and local governments, Indian tribal governments, and institutions of higher education.²⁸ An institute of higher

²⁴ It also may be possible for the President to issue an executive order to combine the schools, but such a process could take considerable time and ultimately may spur legislative action anyway.

²⁵ 5 U.S.C. §§ 3371 *et seq.* The IPA applies to executive agencies, military departments, federal courts, and many other agencies including the Postal Service, Government Printing Office, Library of Congress, and Office of the Architect of the Capitol. See 5 U.S.C. § 3371(3).

²⁶ OFFICE OF PERSONNEL MANAGEMENT, PROVISIONS OF THE IPA MOBILITY PROGRAM, *available at* www.opm.gov/programs/ipa/mobility.asp.

²⁷ 5 C.F.R. § 334.102.

²⁸ 5 C.F.R. § 334.101.

education is defined as “a domestic, accredited public or private 4-year college or university, or a technical or junior college.”²⁹

Based on these criteria, an OIG could assign its employees to work for GMU under the IPA program, provided that the conditions under the IPA statute are met. These conditions include:

- Length of Service: The employee can serve for a two-year term, with a two-year extension granted by the head of the agency. After four years, the employee must return to his or her federal agency for at least 12 months. The employee cannot spend more than six years on IPA mobility assignments over the course of the employee’s federal service.³⁰
- Commitment to Return to Government: The employee must commit to returning to his or her federal agency at the completion of the assignment and serve the agency for a length of time equal to the length of the detail.³¹
- Voluntary Nature of Assignment: The assignment is completely voluntary and the employee must agree to be assigned.³²
- Written Agreement Required: The federal agency, employee, and non-federal entity must enter into a written agreement setting out all obligations and responsibilities of the parties.³³ The Board suggests a standard IPA agreement model for Institute participants’ use.
- Termination: When the assignment is terminated, the employee must be allowed to return to the position previously occupied or be reassigned to another position of like pay and grade.³⁴
- Federal Benefits: Typically, the employee will continue to receive health benefits, leave accrual, and pay increases as the employee would have received absent the assignment.³⁵

Although the Institute Board of Governors will select candidates for IPA positions, the IPA agreements themselves will be managed by the individual employee’s agency. The IPA appointments would not be part of the current GMU contract.

III. Precedents

²⁹ 5 C.F.R. § 334.102.
³⁰ 5 C.F.R. § 334.104.
³¹ 5 U.S.C. § 3372(c); 5 C.F.R. § 334.105
³² 5 U.S.C. § 3372(a).
³³ 5 C.F.R. § 334.106.
³⁴ 5 C.F.R. § 334.107(b).
³⁵ 5 U.S.C. § 3373(c).

There are 25 years of precedents supporting the IG Training Institute model. All three existing training institutes began operations after being created and authorized by the PCIE, before there was any legislation. Further, the PCIE has authorized other specific training activities and knowledge sharing outside of the three training institutes--the IG Net, PCIE-ECIE conferences, IG E-Learning, and the PCIE-ECIE annual awards program. While merging the three academies is a creative venture, it is not unprecedented and clearly addresses the mandate of the Executive Order to establish “a corps of well-trained and highly skilled Office of Inspector General staff members.”³⁶

³⁶ Executive Order 12,805, *supra* note 5.